STATE OF MICHIGAN

COURT OF APPEALS

ROBERT RUMMEL and GODELIEVE RUMMEL, Plaintiffs-Appellees, v HENRY FORD HEALTH SYSTEMS, d/b/a HENRY FORD HOSPITAL, d/b/a FAIRLANE MEDICAL CENTER, Defendant-Appellant.	UNPUBLISHED June 21, 2007 No. 271563 Wayne Circuit Court LC No. 05-500969-NO

Before: Meter, P.J., and Kelly and Fort Hood, JJ.

PER CURIAM.

In this negligence action filed by plaintiffs Robert and Godelieve Rummel,[1] defendant appeals by leave granted from a circuit court order denying its motion for summary disposition pursuant to MCR 2.116(C)(10). We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This Court reviews de novo a circuit court's summary disposition ruling. *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004). When reviewing a motion made pursuant to MCR 2.116(C)(10), "this Court considers the pleadings, admissions, affidavits, and other relevant documentary evidence of record in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists to warrant a trial." *Id*.

The circuit court rejected defendant's contention that it did not owe plaintiff a duty with respect to the automatic emergency room doors that struck him and caused him to fall and sustain head injuries because they amounted to an open and obvious condition. A land "owner 'owes a duty to an invitee to exercise reasonable care to protect the invitee from an unreasonable risk of harm caused by a dangerous condition on the land.'" *Benton v Dart Properties, Inc*, 270 Mich App 437, 440; 715 NW2d 335 (2006), quoting *Lugo v Ameritech Corp, Inc*, 464 Mich 512,

[1] Because Godelieve Rummel raises only a derivative loss of consortium claim, the singular "plaintiff" in this opinion hereinafter refers to Robert Rummel.

516; 629 NW2d 384 (2001). "However, this duty does not generally encompass removal of open and obvious dangers." *Lugo*, *supra* at 516.

> In sum, the general rule is that a premises possessor is not required to protect an invitee from open and obvious dangers, but, if special aspects of a condition make even an open and obvious risk unreasonably dangerous, the premises possessor has a duty to undertake reasonable precautions to protect invitees from that risk. [*Id*. at 517.]

"Whether a danger is open and obvious depends upon whether it is reasonable to expect an average person of ordinary intelligence to discover the danger upon casual inspection." *Hughes v PMG Bldg, Inc*, 227 Mich App 1, 10; 574 NW2d 691 (1997).

Here, we conclude that the emergency room doors presented an open and obvious danger. Individuals generally encounter doors repeatedly on a daily basis, and have familiarity with how they function. Photographs taken of the doors involved in plaintiff's accident demonstrate that each of the two burgundy-colored doors bear a yellow sticker plainly apprising anyone approaching them, "Caution Automatic Door," and that "[t]his Door Opens TOWARD You." The yellow stickers also contain diagrams with arrows pointing toward the direction in which the doors swing open. "[I]t is reasonable to expect an average person of ordinary intelligence to discover the danger [presented by the emergency room doors] upon casual inspection." *Hughes*, *supra* at 10.

We assume with out deciding that defendant's exclusive control over the remote operation of the emergency room doors, as well as the facts that they swing outward and are the only avenue through which visitors to the emergency room can enter the facility, constitute special aspects of the doors that distinguish them from open and obvious ordinary doors. However, even if the emergency room doors qualified as effectively unavoidable to plaintiff, this special aspect did not create some unreasonable danger. As the Michigan Supreme Court summarized in *Lugo*, *supra* at 519, "only those special aspects that give rise to a uniquely high likelihood of harm or severity of harm if the risk is not avoided will serve to remove that condition from the open and obvious danger doctrine."

In this case, the unrebutted deposition testimony of receptionist Nancy Dimaio establishes that within the hours before plaintiff's injury, he approached the reception desk on two or three occasions to gain entrance into the emergency room; that on each occasion she advised plaintiff to stand back and pushed the button that opened the emergency room doors outward; and that on each of these occasions plaintiff successfully negotiated the emergency room doors and entered the facility. Because these facts undisputedly demonstrate that before the accident plaintiff repeatedly had passed through the emergency room doors without injury or incident, we conclude as a matter of law that the doors possess no "special aspects that give rise to a uniquely high likelihood of harm or severity of harm" if they are not avoided. *Id*. Because no evidence creates a genuine issue of material fact that a special aspect of the emergency room doors gives rise to any unreasonable risk of harm, defendant, the premises owner, owed plaintiff no duty of care regarding the doors, which posed an open and obvious danger. *Id*. at 517.

The circuit court also found that defendant owed a duty of ordinary care because it had "undertaken the duty to warn patrons of the risk . . . ." The circuit court correctly recognized that

when a person voluntarily undertakes some function, "he assume[s] a duty to perform it carefully, not omitting to do what an ordinarily prudent person would do in accomplishing the task." *Terrell v LBJ Electronics*, 188 Mich App 717, 721; 470 NW2d 98 (1991). But plaintiff failed to bring forth any evidence to create a genuine issue of material fact that the defendant breached its duty to warn. In light of the undisputed facts that the doors had warning labels at the time of the accident, that Dimaio twice warned plaintiff about the automatic doors and successfully guided him through them shortly before his accident, that Dimaio similarly warned him and positioned him away from the doors immediately before the accident, and the absence of any evidence creating a reasonable inference that the doors somehow malfunctioned at the time of the accident,[2] we conclude that "[t]here is not substantial evidence that forms a reasonable basis for the inference of [defendant's] negligence," i.e., that it breached its duty of ordinary care. *Latham v Nat'l Car Rental Systems, Inc*, 239 Mich App 330, 342-343; 608 NW2d 66 (2000). Because no genuine issue of fact exists with respect to whether defendant breached its duty of ordinary care to watch for and warn visitors approaching the emergency room doors, the circuit court erred by denying its motion for summary disposition pursuant to MCR 2.116(C)(10).

Reversed and remanded for entry of an order granting defendant summary disposition. We do not retain jurisdiction.

/s/ Patrick M. Meter
/s/ Kirsten Frank Kelly

I concur in result only.

/s/ Karen M. Fort Hood

[2] Although we accept the veracity of plaintiffs' contention that the emergency room doors had a sensor malfunction in March 2003, this fact by itself does not reasonably suggest that at the time of the accident 1-1/2 years later the doors operated improperly or unsafely.